IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

CRL.REF.No. 12 of 2007()

SC.83/2006 of ADDL.DISTRICT COURT (ADHOC), KOTTAYAM

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BASED ON THE REFERENCE SUBMITTED BY THE ADDL.DISTRICT AND

SESSIONS JUDGE, (ADHOC) I, KOTTAYAM

RESPONDENT:

STATE OF KERALA

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL REFERENCE HAVING COME UP FOR ADMISSION ON 08/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R.BASANT, J

Crl.Ref.No.12 of 2007

Dated this the 8th day of August, 2007

ORDER

This Criminal Reference has been registered on the basis of a communication received from the Additional District and Sessions Judge (Adhoc) I, Kottayam through the learned Sessions Judge, Kottayam seeking directions in S.C.No.83 of 2006.

2. In that Sessions Case, the accused persons, 20 in number in all, face allegations, inter alia, under Sections 326 and 304 r/w 149 I.P.C. The alleged incident took place on 08.12.2002. The 13th accused in that case was born on 15.08.1985 and on the date of the occurrence ie. 8.12.2002, he had not completed the age of 18 years. Consequently he was a child/juvenile. He must have been dealt with in accordance with the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, which came into force on 1.4.01. Ignoring and overlooking that fact, the learned Magistrate had committed the 13th accused also along with the co-accused. The course adopted by the learned Magistrate was obviously incorrect and is in violation of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000. When this fact was realised by the learned Additional Sessions Judge (Adhoc-I) Kottayam, he has made

this reference to this Court through the learned District and Sessions Judge.

3. There can be no doubt that the procedure adopted by the learned Magistrate is incorrect. It violates the stipulations in Section 7 of the Juvenile Justice (Care and Protection of Children) Act, 2000. It also violates the mandate of Section 18 of the said Act that no joint proceedings of a juvenile and a person who is not a juvenile can be conducted. The committal by the learned Magistrate is obviously incorrect, opposed to law and unsustainable.

4. The error committed deserves to be reversed invoking the powers vested in this Court. Ideally it may perhaps be correct to set aside the committal order and send the matter back to the learned Magistrate so that he can proceed further under Section 7 of the Juvenile Justice (Care and Protection of Children) Act, 2000. But in the interests of the juvenile and in the interests of avoiding needless delay, I am satisfied that the committal order in so far as it relates to the 13th accused alone can be set aside and the learned Additional District and Sessions Judge (Adhoc-I) can be directed to forward the 13th accused along with the records to the Juvenile Justice Board if one has been constituted for the area and if not to the Chief Judicial Magistrate, Kottayam to continue the proceedings against the 13th accused under the J.J Act.

5. This Reference is accordingly answered. The committal of the case as against the 13th accused is set aside. The learned Additional District and Sessions Judge Fast Track (Adhoc)I, Kottayam is directed to forward the 13th accused to the Juvenile Justice Board/C.J.M forthwith along with the relevant records. The Prosecutor shall make all such further documents available to the learned Sessions Judge to facilitate forwarding of the 13th accused along with documents to the Juvenile Justice Board/Chief Judicial Magistrate.

(R.BASANT, JUDGE)

rtr/-